

IN THE CIRCUIT COURT OF  
 THE 11TH JUDICIAL CIRCUIT  
 IN AND FOR DADE COUNTY, FLORIDA  
 GENERAL JURISDICTION DIVISION  
 CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,

et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO

COMPANY, et al.,

Defendants.

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/

Miami-Dade County Courthouse  
 Miami, Florida  
 Thursday, 9:32 a.m.  
 January 20, 2000

PHASE II

TRIAL - VOLUME 431

The above-styled cause came on for trial  
 before the Honorable Robert Paul Kaye, Circuit Judge,  
 pursuant to notice.

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On behalf of Defendant Philip Morris

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On behalf of Defendant R.J. Reynolds

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On behalf of Defendant Brown & Williamson

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KELLY ANNE LUTHER, ESQ.

On behalf of Defendants Liggett Group

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11 None

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13 EXHIBITS

14 DEFENDANTS' OFFERED ADMITTED FOR ID  
EXHIBITS PAGE PAGE PAGE

15 None

None  
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1 (Whereupon, the following proceedings were had:)  
2 THE COURT: Good morning. Have a seat,  
3 please.  
4 What's the order of business?

5 MR. ROSENBLATT: Our first witness is going  
6 to be Dr. Julius Richmond, Your Honor.

7 THE COURT: All right.

8 MR. SMITH: Your Honor, I have something to  
9 take up. I don't even think Dr. Richmond needs to  
10 leave for this.

11 THE COURT: All right.

12 MR. SMITH: We filed a motion with regard to  
13 Dr. Richmond in the Farnan case and Amodeo case,  
14 contending that he should not be allowed to testify as  
15 an expert for various reasons. The Court ruled  
16 previously that he would be allowed to testify on  
17 causation and addiction, and we simply wanted to  
18 preserve our objections, the same ones we made before.  
19 We assume the ruling would be the same.

20 My only question would be, is Dr. Richmond  
21 going to go beyond what the Court allowed him in the  
22 first case, causation and addiction? If not, there's  
23 no issue, because the Court has already ruled on that.

24 THE COURT: I don't know what counsel intends  
25 to do.

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1 MR. ROSENBLATT: That's certainly going to be  
2 the focus of Dr. Richmond's testimony. Of course, it's  
3 also the cell type, that it's not BAC. He's going to  
4 cover the same general areas that were covered in his  
5 testimony on Mrs. Farnan and Mr. Amodeo. It's not  
6 going to be anything different.

7 MR. SMITH: Your Honor, I believe the Court  
8 has already ruled on that. We simply wanted to  
9 preserve our objection.

10 THE COURT: That's fine. Thank you.

11 Let me have a conference with counsel over  
12 here a minute.

13 THE COURT: All right. Let's bring the jury  
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1 in.

2 THE BAILIFF: Bringing in the jury. Jurors  
3 entering the courtroom.

4 (The jurors entered the courtroom.)

5 THE COURT: All right. Good morning, folks.  
6 Have a seat.

7 JURY PANEL: Good morning.

8 THE COURT: How is everybody?

9 JURY PANEL: (Responds affirmatively.)

10 THE COURT: Anybody see anything on TV,  
11 newspapers, magazines, radio, conversations, or in any  
12 way get exposed to any information whatsoever about  
13 this case or any of the issues connected with this  
14 case?

15 JURY PANEL: (Responds negatively.)

16 THE COURT: I do understand that yesterday  
17 afternoon, as you all were leaving, there were a couple  
18 of women who attempted to either talk with you all or  
19 give you a piece of paper of some sort. Do you recall  
20 what I'm talking about?

21 JUROR #5: Yes.

22 THE COURT: Some of you may have been close  
23 in that regard.

24 Did anybody accept any piece of paper or  
25 anything from these women or talk to these people?

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1 JUROR 11: No.  
2 JUROR #5: No.

3 THE COURT: No one knows who these people  
4 are, neither side. I don't know. They just came in  
5 out of the blue.

6 So if anybody attempts in any way to contact  
7 you, please let us know. I know the clerk was there at  
8 the time and witnessed that. But either in the  
9 courthouse or outside the courthouse, let us know. I  
10 don't expect that's going to happen. This is just one  
11 of those crazy little things that occur. But, of  
12 course, it's not appropriate for you in any way to talk  
13 to anyone about this case or receive any information  
14 from any source whatsoever, other than what is in the  
15 public media that you can't help but be exposed to.

16 So with those guidelines -- and I'm sure from  
17 the period of time you've been together, you understand  
18 all that and have been exposed to the Court's  
19 instructions, I don't know, a thousand times. I'm sure  
20 you understand. I just wanted to straighten that out.

21 Okay. We are here now with a new witness.

22 MR. ROSENBLATT: Yes, Your Honor. Dr. Julius  
23 Richmond.

24 THE COURT: Dr. Richmond, please, sir.  
25 Thereupon:

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1 JULIUS B. RICHMOND, M.D.  
2 having been called as a witness, was duly sworn,  
3 examined, and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ROSENBLATT:

6 Q. Good morning, Dr. Richmond. That chair is  
7 starting to seem a little familiar to you, in that  
8 you've testified before the members of the jury  
9 previously.

10 For the record, please state your full name  
11 and your professional address.

12 A. Julius B. Richmond, the department of social  
13 medicine at the Harvard Medical School in Boston.

14 Q. Now, inasmuch as we have previously gone  
15 through your curriculum vitae in detail, in terms of  
16 your publications and honors, I'm going to just hit  
17 some of the highlights at the present time.

18 You are board-certified in what specialty?

19 A. Pediatrics.

20 Q. What medical schools were you affiliated with  
21 during your career as a professor?

22 A. First the University of Illinois, in Chicago,  
23 which is also the institution from which I received my  
24 medical degree. And then in 1953, I moved to the State  
25 University of New York at Syracuse to the Upstate

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1 Medical Center where I chaired the department of  
2 pediatrics, and for a period of that time, for five

3 years, served as dean of the medical school.

4 Q. You were actually the dean of the medical  
5 school at the State University of New York?

6 A. That's correct.

7 Q. And after your affiliation with the State  
8 University of New York, where did you go?

9 A. I then went to the Harvard Medical School as  
10 professor of psychiatry and human development, and  
11 shortly thereafter was also appointed to be chairman  
12 and professor of the department of preventive and  
13 social medicine, and simultaneously professor of public  
14 health in the School of Public Health.

15 Q. What year did you first go to the Harvard  
16 Medical School?

17 A. 1971.

18 Q. '71.

19 And you've maintained your relationship with  
20 the Harvard Medical School ever since?

21 A. With the exception of four years that I  
22 served in Washington as the Surgeon General of the  
23 United States.

24 Q. You were involved with the Head Start program  
25 before you became Surgeon General?

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1 A. Yes. That was in 1965 as part of the War on  
2 Poverty.

3 Q. Okay. And you were the Surgeon General of  
4 the United States during what time frame?

5 A. 1977 to 1981.

6 Q. Now, the 1979 Surgeon General's Report was  
7 the 15-year anniversary following the groundbreaking  
8 1964 report; is that correct?

9 A. That's correct. Surgeon General Luther Terry  
10 issued the first report of his advisory committee on  
11 smoking and health in 1964, and so in 1979, we  
12 summarized the literature of the world for the 15 years  
13 preceding 1979 and published that report.

14 Q. Now, the 1980 Surgeon General's Report was  
15 called: The Health Consequences of Smoking for Women.  
16 And was that report issued during your tenure?

17 A. Yes, it was.

18 Q. Now, after your service as Surgeon General of  
19 the United States for those four years, did you then,  
20 in terms of your professional career, did you return to  
21 Harvard?

22 A. Yes, I did.

23 Q. And tell us in a general way what your role  
24 was at Harvard after you had served as Surgeon General.

25 A. I went back to the Harvard Medical School and  
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1 became professor of health policy in both the medical  
2 school and the School of Public Health. I should add,  
3 actually, the Kennedy School of Government also was  
4 involved, and I held a professorship there, and I'm  
5 emeritus from those appointments now.

6 Q. Now, as I said, I was not going to go over in  
7 any detail the various honors that had been awarded to  
8 you during your career, but I do want to mention one  
9 very recent award, and that was the honorary degree

10 from Yale.  
11 A. That's correct.  
12 Q. When did you receive that?  
13 A. At the last commencement of Yale University  
14 in --  
15 Q. When?  
16 A. -- May of 1999.  
17 Q. A little unusual for a Harvard man to get an  
18 honorary degree from Yale?  
19 A. Yes. The ivy league schools, as you know,  
20 are quite competitive, and that is unusual.  
21 Q. Okay. Now, Dr. Richmond, have you had  
22 occasion to review certain records concerning Angie  
23 Della Vecchia?  
24 A. Yes, I have.  
25 Q. And did the records that I gave you cover her  
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1 diagnosis of lung cancer, her surgery for lung cancer,  
2 the development of brain metastases, the surgery that  
3 she underwent for the brain tumor on August 31 of  
4 19998, and her subsequent course, her subsequent  
5 medical course?

6 A. Yes. The records that I was provided  
7 describe those events.

8 Q. And was there included in the record the  
9 pathological conclusions reached by Dr. Jonas, the  
10 treating pathologist, where he made a diagnosis of  
11 moderately differentiated adenocarcinoma with focal  
12 squamous differentiation? Was that part of the  
13 records?

14 A. Yes, I saw that.

15 Q. In any of the records that you reviewed,  
16 Dr. Richmond, and I know there -- Mrs. Della Vecchia  
17 was not only treated at one hospital, she was treated  
18 at several hospitals, when you look at the total  
19 picture from the time she was diagnosed with lung  
20 cancer, in any of those records, did you observe, did  
21 you discern any indication from any physician in any  
22 specialty who thought that the cell type she might have  
23 had was bronchioalveolar carcinoma?

24 A. No, I did not. No evidence of that. And I  
25 should mention at one point, later in her treatment,

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1 she wanted a second opinion, and so at the Moffitt  
2 Cancer Center in Tampa, all of her pathology slides  
3 were reviewed by another pathologist, Dr. Nicosia, I  
4 think, and he confirmed Dr. Jonas' diagnosis, so I  
5 think we have two pathologists --

6 Q. From two different institutions?

7 A. Two different institutions.

8 Q. Confirming that --

9 A. And one aware specifically of the fact that a  
10 second opinion was being sought, so I think that he  
11 certainly would have looked for any differences, if  
12 there had been any.

13 Q. And the Moffitt Cancer Center is a cancer  
14 center affiliated with the -- I believe the University  
15 of South Florida Medical School in Tampa?

16 A. That's correct.

17       Q. Now, based on everything that you've  
18 reviewed, Dr. Richmond, in terms of Mrs. Della  
19 Vecchia's records, and I'm not limiting this to the  
20 pathology, but her clinical presentation and the course  
21 of her disease, do you concur with Dr. Jonas'  
22 pathological diagnosis?

23       A. Yes. I think from his pathologic diagnosis,  
24 her clinical course was a rather characteristic course  
25 for the diagnosis that he made.

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1       Q. And is that answer, Dr. Richmond, based upon  
2 reasonable medical probability?

3       A. Yes, it is.

4       Q. Have you read any of Mrs. Della Vecchia's  
5 depositions?

6       A. Yes.

7       Q. Now --

8       A. I think, however, I saw only one deposition.

9       Q. Was that the video deposition -- they were --

10      A. Yes. They were videos.

11      Q. You read the video depositions?

12      A. It was definitely a video deposition.

13      Q. Taking into account what you recollect from  
14 her video deposition, I want you to assume the  
15 following facts: That Mrs. Della Vecchia began to  
16 smoke when she was 11 years old. And I want you to  
17 assume that she smoked cigarettes on the average of a  
18 pack and a half a day for 40 years. The first 20 years  
19 of her smoking history she -- although she may have  
20 smoked a wide variety of cigarettes, certainly her  
21 primary cigarette was Pall Mall unfiltered. And for  
22 those 20 years, she smoked about a pack a day. In the  
23 late '70s, she switched to Winston Light 100's and  
24 smoked them up until she stopped smoking following her  
25 brain -- her brain surgery.

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1       So for about 20 years, she smoked primarily  
2 Pall Mall, and for 20 years, she smoked primarily  
3 Winston Lights. And I want you to assume that  
4 following the ingestion, the use of Winston Lights,  
5 that she tried, on a variety of occasions, to quit  
6 smoking. She attempted to quit smoking, but up until  
7 the time that she was diagnosed with cancer, she had  
8 never been successful for more than several hours. She  
9 had never been successful for as long as 24 hours on  
10 any given occasion when she had attempted to quit.

11      Now, I want you to assume that once  
12 Mrs. Della Vecchia was diagnosed with lung cancer in  
13 early 1997, and she was told that she would need to  
14 have surgery for the removal of the cancerous tumor in  
15 the lower lobe of her right lung, and she was advised  
16 that in order for the surgeon to perform the surgery  
17 and give her the best chance for a successful outcome,  
18 and which would impact her prognosis, it was critical  
19 that she stop smoking.

20      And I want you to assume that for a period of  
21 time before the surgery, she was able to quit, and for  
22 a period of time after the lung surgery, she was able  
23 to quit, so that primarily the months of February,

24 March and April, she didn't smoke, of 1997. And,  
25 remember, the surgery was performed March 21, 1997.

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1 During the month of May 1997, Mrs. Della  
2 Vecchia gave in to her craving for cigarettes, and it  
3 was her intention to smoke one or two, but before any  
4 time at all passed, she was back to being a two-pack --  
5 a two-pack-a-day smoker. And as I say, she continued  
6 smoking from May of 1997 until about the time she was  
7 diagnosed with brain cancer in August of 1998, and she  
8 passed away July 25, 1999.

9 Dr. Richmond, do you have an opinion based  
10 upon reasonable medical probability as to whether  
11 Mrs. Della Vecchia was addicted to cigarettes?

12 MR. SMITH: Your Honor, object to form.

13 A. Yes, I do.

14 THE COURT: Just a moment.

15 MR. SMITH: The question is an inappropriate  
16 hypothetical.

17 THE COURT: Overruled.

18 BY MR. ROSENBLATT:

19 Q. You may answer the question.

20 A. Yes. In my view, she definitely was  
21 addicted.

22 Q. What do you base that answer on?

23 A. I base it on the context of her smoking, the  
24 history of her having initiated smoking at 11 years of  
25 age, and the gradual build-up in the quantity in which

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1 she smoked was rather characteristic. And then she  
2 describes herself as being a confirmed, or in my view,  
3 an addicted smoker, by the age of 13 or 14, and over  
4 that time, having thought about the desirability of  
5 quitting smoking, and having made some efforts, as you  
6 indicated, which were ineffective for longer than 24  
7 hours, and then the history of her, after a very  
8 significant health problem, lung cancer, of her having  
9 responded to the physician's admonitions that she stop,  
10 still craving cigarettes sufficiently so that even with  
11 that major health problem, and the formidable nature of  
12 that health problem, she succumbs to the craving, as  
13 she put it in her deposition, the need for a cigarette.  
14 And that is so characteristic with people who are  
15 addicted, and leads to the continuity of the smoking.

16 So she resumes virtually where she left off.

17 Q. Well, let me put this question to you. Does  
18 the fact, in your mind, and putting to bear on this  
19 question your whole career in medicine -- and you were  
20 a professor of psychiatry at the Harvard Medical  
21 School, correct?

22 A. That's correct.

23 Q. Does the fact that Mrs. Della Vecchia was  
24 able to quit smoking after the diagnosis of lung cancer  
25 for those three months in 1997, does that tell you or

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1 imply to you in any way that her previous attempts to  
2 quit before she had been diagnosed with lung cancer

3 were somehow not sincere attempts?

4 MR. SMITH: Your Honor, that's a leading  
5 question.

6 THE COURT: Overruled. It's not leading.

7 A. No. But that's characteristic of addicted  
8 smokers; that they make numerous efforts to stop,  
9 sometimes successful for short periods of time, and  
10 often not.

11 BY MR. ROSENBLATT:

12 Q. In terms of your understanding addiction, and  
13 in terms of your definition of addiction, is there  
14 anything magical about meeting certain criteria in the  
15 sense that a person, in order to be addicted, has to be  
16 able to quit for more than 24 hours? Is there anything  
17 magical about that demarcation line of whether someone  
18 can go over 24 hours or can't go over 24 hours when  
19 they attempt to quit?

20 A. No. There is no threshold by which one makes  
21 that judgment.

22 Q. And, Dr. Richmond, do you have an opinion  
23 based upon reasonable medical probability as to what  
24 caused Mrs. Della Vecchia's lung cancer?

25 A. Well, I don't have any question but it was

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1 her long history of cigarette smoking.

2 Q. As you reviewed the records, is there  
3 anything in second place to that --

4 A. No. There is --

5 Q. -- that could provide a viable, reasonable,  
6 sensible medical explanation as to what caused her lung  
7 cancer, other than the cigarette smoking?

8 A. No. And I would say this is a rather classic  
9 example of the emergence of lung cancer as a  
10 consequence of long-term cigarette smoking, and is  
11 responsible -- it's that clinical course resulting from  
12 addiction of large numbers of people that resulted in  
13 the 20th century of the tremendous increase in lung  
14 cancer that we saw.

15 Q. In your opinion, Dr. Richmond, did Mrs. Della  
16 Vecchia's return to smoking in May of 1997, following  
17 the lung surgery in March, does that indicate to you  
18 that she was not really committed, or does that  
19 indicate to you the strength of the addiction?

20 A. Oh, it clearly represents the strength of the  
21 addiction, and she describes in her deposition the  
22 craving that she had for cigarettes.

23 Q. Now, Dr. Richmond, as someone who has been a  
24 professor of psychiatry at the Harvard Medical School,  
25 I'd like you to explain to the members of the jury, if

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1 you could, the psychological dynamics involved, a  
2 person is told, "You have lung cancer," and obviously  
3 knowing the prognosis for lung cancer usually is, you  
4 know, bad -- some people recover, but it's usually  
5 bad; is that correct?

6 A. That's correct.

7 Q. And the person is told by a doctor, who they  
8 like and who they have confidence in, "The reason you  
9 got the lung cancer and the reason your life is in

10 jeopardy and the reason you're going to have the tumor  
11 removed is because you did this for 40 years," and then  
12 after a period of time --

13 THE COURT: Did this?

14 MR. ROSENBLATT: Smoke. I'm sorry. I'm  
15 sorry, Your Honor.

16 BY MR. ROSENBLATT:

17 Q. "Because you smoked cigarettes for 40 years  
18 and you inhaled and you puffed away and you took one  
19 cigarette after the other."

20 What is the psychological imperative that  
21 will allow a person being told that -- I mean, this  
22 product is the enemy, this product has caused you lung  
23 cancer, to continue to smoke?

24 A. Well, I think it is illustrative of the  
25 tremendous power of nicotine to keep people addicted.

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1 And Mrs. Della Vecchia describes the fact that she was  
2 embarrassed to go to her physician and to acknowledge  
3 that she had trouble quitting, even though he had  
4 admonished her not to smoke.

5 And she does, however, reveal to him over the  
6 course of visits that she's continuing to smoke  
7 because, as she puts it at her deposition, she couldn't  
8 lie to him, but she was sufficiently embarrassed by it  
9 so that she was very diffident about having to tell him  
10 that she really was having difficulty stopping, even  
11 though he had so strongly urged her to stop.

12 Q. Now, Dr. Richmond, the Surgeon General's  
13 Report that came out, that was devoted exclusively to  
14 nicotine addiction, was a report that came out after  
15 you were no longer the Surgeon General?

16 A. That's correct.

17 Q. But is that a report you read and paid very  
18 close attention to?

19 A. Oh, yes.

20 Q. Is there anything incompatible, Dr. Richmond,  
21 about being addicted on the one hand and enjoying  
22 cigarettes on the other?

23 A. That's part of the process of addiction. If  
24 people didn't perceive some pleasurable activity, it  
25 would be much easier to give it up. But as we know,

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1 from our clinical experience and from long-term studies  
2 of addicted smokers, that they have great difficulty  
3 quitting and rarely can quit on the first attempt.

4 The story of cigarette smoking is that the  
5 joke that goes on among cigarette smokers is, "It's  
6 easy to quit; I've done it hundreds of times." And  
7 that's the problem; that the power of the addiction and  
8 the pleasurable activity that is perceived by the  
9 smoker is what keeps them smoking.

10 And there isn't a smoker who has quit that  
11 I've ever encountered who doesn't ascribe having a  
12 craving for a cigarette virtually every single day that  
13 they have remained quitting.

14 Q. So even if people successfully quit, they  
15 still have that craving?

16 A. That's correct.

17 Q. What is the correlation, Dr. Richmond, if  
18 any, between a scar in the lung and lung cancer?  
19 A. Well, I don't know of any definitive  
20 correlation, and in my view, the literature that I've  
21 read in recent textbooks of medicine doesn't make a  
22 relationship, because I don't -- to the best of my  
23 knowledge, there's never been a definitive study  
24 establishing preexisting scarring with the development  
25 of lung cancer.

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1 The point that I would make is that I don't  
2 think it is really possible, from the literature I have  
3 read, for the differentiation of scarring that occurs  
4 in relationship to the cancer, from scarring which  
5 would have existed prior to the cancer.

6 Q. Do you have an opinion, based upon reasonable  
7 medical probability, if we assume -- if we assume that  
8 Mrs. Della Vecchia had a scar in her lung, if we assume  
9 that for the purpose of this question, did the scar  
10 cause her lung cancer, or did the cigarette smoking  
11 cause her lung cancer?

12 A. Well, 40 years of cigarette smoking, it seems  
13 to me is clearly the cause. It's such a potent factor  
14 in the genesis of lung cancer that it's inconceivable  
15 to me that it would not have been the cause.

16 Q. It's inconceivable to you that cigarette  
17 smoking would not have been the cause?

18 A. That's correct.

19 MR. ROSENBLATT: Dr. Richmond, thank you very  
20 much.

21 THE COURT: Cross.

22 MR. SMITH: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. SMITH:

25 Q. Good morning, Dr. Richmond.

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1 A. Good morning.

2 Q. I'm Gordon Smith. I represent the Brown &  
3 Williamson Tobacco Corporation. We've not had the  
4 opportunity to meet, so I wanted to introduce myself to  
5 you. Good morning.

6 A. Good morning.

7 Q. Let's start with where you left off talking  
8 about scarring and scar cancers. Okay.

9 You're familiar with the term "scar cancer"?

10 A. I'm familiar with the term, yes.

11 Q. Right. Scar carcinoma, same term: scar  
12 cancer, scar carcinoma?

13 A. That's correct.

14 Q. And you have read literature in the past  
15 describing scar cancers?

16 A. I have a general reading knowledge that a  
17 physician would have.

18 Q. That would be an area that would be written  
19 about primarily by pathologists, correct?

20 A. That's correct.

21 Q. And that's not -- it's an area that you are  
22 familiar with, but it's not your area?

23 A. That's correct.

24 Q. There are pathologists who have spent a  
25 lifetime studying pathology and how cells and cancer  
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1 relate to smoking, correct?

2 A. That's correct.

3 Q. One of those, and one of the giants in that  
4 area, was Oscar Auerbach, wasn't he?

5 A. That's correct.

6 Q. Now, scar cancers can be adenocarcinoma,  
7 can't they?

8 A. Well, I don't -- well, in the way in which  
9 it's written in the literature, that's true, but in  
10 terms of cause and effect, if that's what you're  
11 driving at, I don't -- I don't know of any  
12 cause-and-effect literature.

13 Q. I don't want to -- I'm going to get to cause  
14 and effect, and I'll tell you when I'm there. I'm not  
15 trying to hide anything. I'm going to tell you -- I'm  
16 going to talk about cause and effect.

17 All I'm saying is that in the literature, the  
18 literature that describes scar cancers, many of those  
19 are adenocarcinomas?

20 A. That's correct.

21 Q. And many of those are the bronchioalveolar  
22 subtype carcinoma, correct?

23 A. Well, I wouldn't say many, because that's a  
24 very unusual type of carcinoma.

25 Q. That's fine, but literature describes finding  
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1 bronchioalveolar adenocarcinoma in scar cancers,  
2 correct?

3 A. Well, it's a rarity, but it does happen.

4 Q. Well, adenocarcinomas and its subtypes can  
5 occur in scar cancers; correct?

6 A. That's correct.

7 Q. Now, people have been writing about the  
8 existence of scar cancer as a distinct entity for many  
9 years; have they not?

10 A. Yes, they have.

11 Q. Now, I asked you a question a minute ago  
12 about Dr. Oscar Auerbach. He passed away within the  
13 last year or so?

14 A. Yes. That's right.

15 Q. And you knew Dr. Auerbach personally?

16 A. No. I didn't have the good fortune to know  
17 him personally.

18 Q. He was a highly respected pathologist,  
19 correct?

20 A. That's correct.

21 Q. And he actually authored a number of the  
22 studies that lead to the Surgeon General's conclusion  
23 that smoking caused lung cancer, correct?

24 A. Yes. And I'd hoped that the industry would  
25 have acknowledged his studies earlier than they have,

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1 but --

2 Q. Well, are you aware -- in fact, a witness for

3 Brown & Williamson did make that acknowledgment on this  
4 witness stand earlier in this trial?

5 A. No, I don't know that.

6 Q. Dr. Auerbach had continued to work and do  
7 valuable research up until the time of his death,  
8 didn't he?

9 A. That's correct.

10 Q. In fact, you recognize what I've got here,  
11 don't you?

12 A. Oh, yes, indeed.

13 Q. You know it well?

14 A. I do.

15 Q. These are the three reports --

16 A. Yes.

17 Q. -- you authored?

18 A. Yes, yes, indeed.

19 Q. You've lived with these for a while?

20 A. Yes, I have.

21 Q. And, in fact, I have -- you wouldn't argue  
22 with me if I told you that I had tabbed the citations  
23 to Dr. Auerbach, would you? You cited him a lot?

24 A. Well, I'm surprised it's that few because he  
25 did so much basic early work.

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1 Q. Well, to be fair, some of these -- they're in  
2 alphabetical order, and some of these pages will have  
3 multiple citations for him. You're right, there are  
4 more --

5 A. Oh, yes. We cite him extensively.

6 Q. And you know who Lawrence Garfinkel was?

7 A. Oh, yes.

8 Q. Did you know Mr. Garfinkel?

9 A. No. I didn't happen to know him.

10 Q. But, again, in the area of statistics and  
11 epidemiology and smoking, he was one of the giants?

12 A. That's correct.

13 Q. And he also passed away last June?

14 A. That's correct.

15 Q. And he continued to write and research right  
16 up until the time of his death?

17 A. That's correct.

18 Q. Doctor, you were in the courtroom yesterday  
19 and heard the testimony?

20 A. Yes, I did.

21 Q. And you heard me talk to Dr. Burns about an  
22 article written by these two giants in the area of  
23 smoking and health; did you not?

24 A. That's correct.

25 Q. And by the way, Drs. Auerbach and Garfinkel,

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1 I don't mean this in any bad way, but they weren't  
2 friends of tobacco; they thought smoking was a bad  
3 thing, and their science, they thought, proved that?

4 A. That's correct.

5 Q. Okay. Are you familiar with that article  
6 that they wrote?

7 A. No, I'm not. I don't have a working  
8 familiarity with it.

9 Q. You don't what?

10       A. I don't have a working familiarity with that  
11       article.

12            MR. SMITH: I have one today, Mr. Rosenblatt.

13            MR. ROSENBLATT: Thank you.

14       BY MR. SMITH:

15            Q. Let me show you a copy of it.

16            Now, you heard my -- you heard Dr. Burns'  
17       testimony yesterday. Do you recall when we went  
18       over -- Doctor, do you recall yesterday, when we went  
19       over that chart, the various things that described  
20       Mrs. Della Vecchia's cancer?

21            A. Yes. Yes, I do.

22            Q. And do you agree with Dr. Burns that all of  
23       those items describe her cancer?

24            Do you want me -- let me get them out.

25            A. Well --

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1            Q. That's the fair thing to do.

2            I'll just hold this up here. I'm not going  
3       to use it but a minute.

4            That it was peripheral, hyalinized, there was  
5       puckering, anthracotic --

6            A. Not puckering, dimpling.

7            Q. Dimpling?

8            A. Dimpling, different from puckering.

9            Q. Dimpling. But generally that describes her  
10       tumor, if we put puckering or we put dimpling here?

11            A. Right. One point, however, that I would make  
12       is that in the pathology report, there is no true scar.  
13       What Dr. Jonas describes is a scar-like lesion that he  
14       thinks has arisen with the development of the  
15       carcinoma. He does not make the assumption that there  
16       was a preexisting scar.

17            Q. Have you read Dr. Jonas' deposition in this  
18       case?

19            A. No.

20            Q. Did you know it existed?

21            A. No, I didn't.

22            Q. Mr. Rosenblatt didn't give it to you?

23            A. No.

24            Q. Are you aware that Dr. Jonas' testimony is he  
25       doesn't know one way or the other that the scar

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1       preexisted or not?

2            A. Well, I assume if he says scar-like, that's  
3       part of -- and that is, of course, the current debate  
4       in this field, is that no one can determine that the  
5       scar preexists.

6            Q. And that's right, and that's the status of  
7       things; it's a debate?

8            A. That's correct.

9            Q. Nobody knows for sure?

10           A. That's correct.

11           Q. There are good, honest, hard-working,  
12       qualified scientists who believe in scar cancer, aren't  
13       there?

14           A. There are some. I would say they're  
15       declining in number. And the current -- some of the  
16       current textbooks don't even mention scarring as a

17 factor.  
18 Q. Doctor, virtually all of the pulmonologists'  
19 textbooks have a section on scar cancer, don't they?  
20 A. The older ones.  
21 Q. No, even the ones today. Frazer and Pare  
22 talk about it?  
23 A. Some of the textbooks in internal medicine  
24 that I've reviewed recently do not mention it as a  
25 predisposing factor.

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1 Q. But one of the -- pulmonology would be where  
2 you would look for that, isn't it?  
3 A. Well, internal medicine textbooks are  
4 standard textbooks for physicians.  
5 Q. Well, let me go back.  
6 There's still, as you said, not a final  
7 answer on which came first, the chicken or the egg?  
8 A. That's right.  
9 Q. Whether the scar caused the cancer or whether  
10 the cancer causes the scar, right?  
11 A. That's right.  
12 Q. Let's talk for a minute about what  
13 Drs. Auerbach and Garfinkel found in their study.  
14 By the way, do you know of any other studies  
15 that particularly studied, as this one did, scar cancer  
16 of the lung? Do you know of any other studies?  
17 A. No. I'm not specialized in this field, so...  
18 Q. Isn't this, in fact, the definitive study on  
19 scar cancer of the lung?  
20 A. Well, I wouldn't be in a position to say that  
21 it's the definitive study.  
22 Q. I only want to go over a few things in there.  
23 And I'd like to draw your attention to the  
24 first page.  
25 Doctor, are you with me?

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1 THE COURT: The first page?  
2 MR. SMITH: Yes, sir.  
3 A. Yes.  
4 BY MR. SMITH:  
5 Q. And you see this area on the first column  
6 that's highlighted on the board? It's highlighted on  
7 yours, too, if it's easier for you.  
8 A. Yes. Yes.  
9 Q. This is Auerbach and Garfinkel writing:  
10 "Since the earliest report in the literature  
11 by Friedrich in 1939" -- and you're not aware of any  
12 paper before 1939, are you?  
13 A. No, I'm not.  
14 Q. -- "of peripheral lung" -- by the way, do you  
15 know whether Friedrich wrote in German or in English  
16 when he wrote that paper?  
17 A. I'd have to look at the bibliography.  
18 Q. Well, if he wrote it in German, then it would  
19 be un -- well, never mind. Let me just forget that.  
20 A. It's not listed in the bibliography.  
21 Q. "Since the earliest report in the literature  
22 by Friedrich in 1939 of peripheral lung carcinomas  
23 arising from subpleural scars, there has been a number

24 of these descriptions of these cancers as a separate  
25 entity," and we've agreed that there have been science  
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1 that says that, "i.e., scar cancers. Reports indicate  
2 that many scar cancers have been classified as  
3 adenocarcinomas or bronchioalveolar carcinomas, and it  
4 is tumors of this type which most frequently occur if  
5 lung cancer develops in a nonsmoker." Correct?

6 A. That's correct.

7 Q. And these two giants of science against  
8 smoking found that, correct?

9 A. Yes.

10 Q. Let's go on.

11 A. That's correct.

12 Q. I'm sorry. Did I interrupt you, Doctor?

13 A. No. I said yes.

14 Q. I'm sorry if I did.

15 Let's go to Page 638, and they went on to  
16 say, "Although some investigators have proposed that  
17 peripheral tumors developing on the basis of chronic  
18 pulmonary fibrosis and of a diffuse interstitial  
19 fibrosis are also scar cancers, the criteria used  
20 here" -- by Auerbach and Garfinkel -- "are essentially  
21 those described by Friedrich."

22 And then it goes into the various factors  
23 that I listed on that list yesterday with Dr. Burns.  
24 Do you remember that?

25 A. Yes.

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1 Q. And that describes the type of cancers that  
2 Auerbach and Garfinkel were looking at, correct?

3 A. Right.

4 Q. All right. Let's go on to 639, if we can,  
5 Doctor.

6 In their study, "Among the smokers, the  
7 percent of peripheral lung cancer cases with a scar  
8 showed no increase with the amount of cigarette  
9 smoking."

10 That's what they found, right?

11 A. That's correct.

12 Q. All right. Let's go on to the next page,  
13 640.

14 And they describe what they found in more  
15 detail. The way to determine whether there's a  
16 relationship between smoking in your study is to take  
17 histories and find out if they were smokers, correct,  
18 Doctor?

19 A. That's correct.

20 Q. All right. And so they did that.

21 They said, "Smoking and occupational  
22 histories were available for 830 of the 1186 lung  
23 cancers in the 21-year period."

24 It's a pretty good size study of lung  
25 cancers, almost 1,200, isn't it?

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1 A. Yes. But that's a significant discrepancy in  
2 terms of the histories.

3 Q. Well, of course, there are fewer than 1,200,  
4 but they're only going to study the ones that they had  
5 histories for, 800?

6 A. But you have an ascertainment bias here.

7 Q. I understand, but they did obtain those  
8 histories, and they did a separate analysis, made of  
9 the proportions of scars by the amount of smoking,  
10 broad occupational group and by age at death. As in  
11 the analysis of peripheral lung cancer, no increase  
12 with cigarette smoking was found, and that means no  
13 increase of scar cancer, correct?

14 A. What they call scar cancer, right.

15 Q. Right. But you're not in a position as an  
16 expert in pathology to contradict what Auerbach and  
17 Garfinkel found in their study, are you?

18 A. No, I'm not contradicting what they stated.  
19 But there isn't a study that's ever been done that  
20 couldn't be critiqued, and that's what I'm suggesting,  
21 that there's an ascertainment bias.

22 Q. That's an interesting question. You  
23 described this 1979 book, and you can see this one has  
24 been used for a while.

25 A. Yes. Yes.

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1 Q. This is still a very important volume --

2 A. That's correct.

3 Q. -- in the science of smoking and health,  
4 isn't it?

5 A. That's correct.

6 Q. People refer to this every day, don't they?

7 A. They do.

8 Q. The fact that it was written in 1979 doesn't  
9 mean it's no longer valuable, does it?

10 A. Well, yes. There's been a lot of updating  
11 since then. For example, I couldn't, because of the  
12 data that were available to me then, to say that  
13 smoking was definitely addictive then, but a few years  
14 later, the Surgeon General could make a definitive  
15 statement.

16 Q. Right. There was still serious issues -- a  
17 serious question about whether smoking was addictive in  
18 1979 when this came out, right?

19 A. Well --

20 THE COURT: Excuse me. For the record,  
21 "this" being?

22 MR. SMITH: This being the '79 Surgeon  
23 General's Report. Thank you, Judge.

24 Any time you want to ask a question for me.

25 THE COURT: No, it's not that. I just want

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1 the record to reflect what you're talking about.

2 MR. SMITH: I appreciate it. Thank you.

3 A. Well, if I had the data, which subsequently  
4 we've learned that the industry had in '79, I would  
5 have made the conclusion then.

6 BY MR. SMITH:

7 Q. That's what I'm saying. More science came  
8 out?

9 A. Nicotine is addictive -- well, science came

10 out, but it was in the files of the industry at that  
11 time.

12 Q. Now, Dr. Auerbach and Dr. Garfinkel were very  
13 active in continuing their work in smoking and health  
14 up to and into 1999; were they not?

15 A. That's correct.

16 Q. For 20 years, right?

17 A. That's correct.

18 Q. And they never wrote a follow-up paper on  
19 this saying that they were mistaken, did they?

20 A. Well, I don't think they wrote any follow-up  
21 paper to the best of my knowledge, and this is dated  
22 '79, so that apparently they didn't pursue the subject.

23 Q. Well, or maybe there wasn't any reason --

24 MR. ROSENBLATT: Well, I'll object to  
25 speculation, Judge.

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1 Q. -- to follow up.

2 THE COURT: Sustained.

3 MR. SMITH: I'll withdraw the question.

4 BY MR. SMITH:

5 Q. You're not aware of any letter to the editor  
6 that they ever wrote following up or saying, you  
7 shouldn't rely on this paper, anything like that, are  
8 you?

9 A. No. But the point that I would make is the  
10 definitive study concerning scarring as the cause of  
11 lung cancer has still not been done, and this is a  
12 retrospective case study, which inherently has some  
13 bias to it.

14 Q. And until that definitive study is written,  
15 we've got to use Auerbach and Garfinkel, don't we?

16 A. Well, the literature that has developed  
17 subsequently is such as to cast considerable doubt on  
18 the issue of scarring as a cause of lung cancer.

19 Q. Doctor, before we leave this article, I do  
20 want to make sure that the jury is aware that the fact  
21 that there was no relationship found between smoking  
22 habits and scar cancer was a significant finding, such  
23 that it was in the summary prepared by the authors, and  
24 you can see that on the first page, you see where it  
25 says, "No relationship was found between smoking habits

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1 and scar cancer"?

2 A. In this particular study, with the kind of  
3 selection that they made. My point is that the ideal  
4 study has still not been done, and that is an  
5 introspective study, in which one studies a large  
6 population of people, some of whom would have lung  
7 scars, and to observe in a randomly selected population  
8 like that whether there is a greater occurrence of lung  
9 cancer in the scar tissue.

10 Q. Doctor --

11 A. And that definitive study has not been done,  
12 and I've tried to think of how one would set that up.  
13 The reason it hasn't been done is that I think it would  
14 be a virtually impossible study to do.

15 Q. Well, because that study hasn't been done --  
16 well, let me come into this some other way.

17           This jury is going to have to rely on the  
18 evidence that does exist; isn't that correct?  
19           A. That's correct.  
20           Q. And not on some study that hasn't been done  
21 or maybe couldn't have been done, and at least part of  
22 that evidence that does exist is an article that was  
23 written by Auerbach and Garfinkel?  
24           A. That's correct.  
25           Q. Doctor, just to make it clear, that this is  
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1 not some theory that no longer exists, let me show you  
2 an article written in 1995 in the periodical Military  
3 Medicine, by Dr. Bok Lee, department of surgery, V.A.  
4 Medical Center, Castle Point, New York, New York  
5 Medical College in New Rochelle Hospital Medical  
6 Center.

7            You're familiar with those facilities and  
8 institutions?

9            A. I know the facilities, yes.  
10           Q. And in the introduction, Doctor, let's see  
11 what we've got here. Pulmonary Scar Carcinoma: Report  
12 of Three Cases and Review of the Literature, correct?  
13 That's the title.

14           A. Yes.  
15           Q. So we're in 1995, right? Correct?  
16           A. Yes.

17           Q. And writing about pulmonary scar cancer, and  
18 the author in 1995 says: "Pulmonary scar carcinoma was  
19 first reported by Friedrich in 1939. The definition"  
20 -- and he goes through the definition, and then if you  
21 look at the last two sentences, "The controversy  
22 whether the scar precedes or follows the development of  
23 peripherally located pulmonary scar cancers still  
24 exists. We present three cases of pulmonary scar  
25 carcinoma." And that simply confirms what you said,

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1 there still is a debate about scar cancer, correct?  
2           A. Yes. And these three cases are specifically  
3 selected to describe that.

4           Q. And the controversy is whether or not the  
5 scar causes the cancer or whether the cancer causes the  
6 scar?

7           MR. ROSENBLATT: Objection, Your Honor.  
8 Neither article says that at all. Neither article says  
9 it causes cancer.

10           THE COURT: Sustain the objection. The  
11 article speaks for itself.

12           MR. SMITH: That wasn't -- the question  
13 didn't relate to the article, Your Honor. It was a  
14 simple question about what the continuing debate is.  
15 But I'll go on.

16 BY MR. SMITH:

17           Q. Doctor, yesterday Dr. Burns -- you've heard  
18 Dr. Burns' testimony, didn't you?

19           A. Yes, I did.

20           Q. He repeated several times a theory about  
21 scars keeping the lungs from clearing carcinogens from  
22 the lung, and that maybe that's how scars -- cancers  
23 arise near scars. Do you remember that?

24 A. Yes. That's a hypothesis.  
25 Q. And it's just a hypothesis, isn't it?  
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1 A. That's correct.  
2 Q. There's no scientific proof of that  
3 whatsoever, to your knowledge?  
4 A. If one assumed, which is what he was doing,  
5 that there was a relationship between scarring and lung  
6 cancer, he was trying to provide a hypothetical  
7 explanation for why that would happen.

8 Q. All right. But there's no scientific proof  
9 of that hypothesis, is there?

10 A. No, not as yet.

11 Q. Let's turn to the subject of addiction  
12 briefly, Doctor.

13 Did I understand correctly that you have only  
14 looked at one deposition of Angie Della Vecchia?

15 A. That's correct.

16 Q. Now, were you here for opening statements?

17 A. No, I was not.

18 Q. Did you know that there were -- well, when  
19 did you first find out that there were two depositions  
20 of Mrs. Della Vecchia?

21 A. Well, in reading the deposition that I had,  
22 she is challenged by Mr. Reilly with a statement that  
23 she had made in a prior deposition, in which he refers  
24 to her having said it was a joke that she -- she had  
25 tried to quit smoking, and she reacts to that with --

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1 she reacts to that with considerable anger.

2 Q. My point is --

3 A. And so I assumed it was a prior deposition  
4 that I hadn't known about. But until I read that, I  
5 didn't know that there had been a prior deposition.

6 Q. And Mr. Rosenblatt didn't give you that prior  
7 deposition?

8 A. No, he did not.

9 Q. So I'll just represent to you that it's 233  
10 pages, and you haven't read any of that?

11 A. No.

12 Q. So you don't know what she said in there  
13 about -- in the first 233 pages of her deposition about  
14 her efforts to quit, correct?

15 A. No. I only know from the second deposition.

16 Q. Or her knowledge of the risks of smoking,  
17 what she said in that first deposition?

18 A. No, I do not.

19 Q. Dr. Richmond, simply smoking cigarettes for  
20 an extended period of time is not enough to establish  
21 addiction by itself, is it?

22 A. Well, the context in which that takes place,  
23 the continuity of exposure, the feelings of the  
24 individual as a consequence of that, and then the  
25 developing need of dependence on the substance.

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1 Q. But just the fact -- excuse me. I'm sorry.  
2 Were you through?

3                   But the fact alone that smoking regularly  
4 doesn't -- does not alone show addiction, does it; it's  
5 a prerequisite?

6                   A. No, not in and of itself.

7                   Q. Now, you actually, in your practice as a  
8 pediatrician, treated some smokers for their  
9 dependence, didn't you?

10                  A. That's correct.

11                  Q. And these would be young people who were  
12 smoking that would be referred to you by their parents  
13 or whatever, maybe by themselves, that you helped to  
14 stop smoking, correct?

15                  A. That's correct.

16                  Q. And the first thing you always ask these  
17 people was, "Do you want to stop smoking?" right?

18                  A. Yes. That's the question that I would always  
19 ask, yes.

20                  Q. Because if they didn't want to stop smoking,  
21 you wouldn't even treat them, would you?

22                  A. Well, I wouldn't, because under the  
23 circumstances in which I was practicing, I had to be  
24 selective.

25                  Q. Right. But, you know, somebody came and  
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1                  said, "You know, Doctor, I was at a bowling alley the  
2 other day and I was with a group of my friends --  
3                    (Brief interruption.)

4                  Q. Let me start over. If someone said, "Doctor,  
5 you know, I had some friends at my bowling team and  
6 they all decided to stop smoking, and they asked me to  
7 stop with them, we'd be a support group, we'd stop  
8 together, and I told them, you know, I don't want to  
9 stop smoking; I just don't want to," that would be  
10 somebody you wouldn't agree to treat; isn't that right?

11                  A. Well, at that time.

12                  Q. Right, because they've got to want to be  
13 committed before you'd get --

14                  A. Well, they probably wouldn't come to me if  
15 they weren't interested.

16                  Q. That's probably a fair point.

17                  But you can't stop smoking unless you wanted  
18 to make an effort, whether you're addicted or not?

19                  A. Well, that's correct.

20                  Q. And your definition of a serious attempt to  
21 quit is that someone either consults with a physician  
22 or some clinic in an effort to get help quick; that's a  
23 serious effort under your definition?

24                  A. Well, that's one criteria.

25                  Q. And Angie Della Vecchia never did that until  
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1                  after she got lung cancer, did she, go to a doctor or  
2 seek other assistance?

3                  A. Well, at the time her husband developed an  
4 illness back in the late '70s, she did seriously, as  
5 she describes it, try to quit.

6                  Q. And do you recall -- well, I guess you don't,  
7 because -- it would have been relevant to your inquiry  
8 to know --

9                    MR. ROSENBLATT: Objection, Your Honor, if

10 now we're going to read from the deposition, which is  
11 apparently what counsel is going to do now.

6 BY MR. SMITH:

7 Q. Doctor, so you're not aware, then, that in  
8 the deposition --

9 MR. ROSENBLATT: No, no. That was not the  
10 way the question was going to be asked. We just  
11 discussed this.

12 THE COURT: That's the second part. The  
13 first part hasn't been asked. So ask the first part;  
14 then go to the second part.

15 MR. SMITH: Okay.

16 BY MR. SMITH:

17 Q. Doctor, in looking at the deposition, were  
18 you provided some of the information you were looking  
19 for, information about her efforts to quit?

20 A. That's correct.

21 Q. Because that's relevant to whether she was  
22 addicted and the degree to which she was addicted,  
23 correct?

24 A. That's correct.

25 Q. And you've opined to the jury on that, right?

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1 A. That's correct.

2 Q. And information about quit attempts was key  
3 to your addiction opinion in this case?

4 A. That's correct.

5 Q. Did you know that in the other deposition  
6 that you weren't given, she was asked: "You said  
7 earlier that when you quit in February of 1997, and  
8 then when you quit in" -- I'm sorry. Let me start  
9 over.

10 "You said earlier that when you quit in  
11 February of 1997, and then when you quit in August of  
12 this year, that then you really wanted to quit. On the  
13 other occasions that you tried to quit, did you really  
14 want to quit smoking?"

15 And her answer was: "No, I don't think so,  
16 no."

17 You didn't have that piece of testimony, did  
18 you?

19 A. No, I didn't have that.

20 Q. And were you aware that -- and so you also  
21 weren't aware that she was asked in the other  
22 deposition: "Had you -- have there been other times  
23 when you were a smoker that you decided to quit  
24 smoking?"

25 And she answered under oath: "That time with  
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1 my husband in 1977, and I recall trying other times,  
2 and it was just a joke. You know, I wouldn't last.  
3 I'd just say, no, I'm not quitting."

4 Now, it's also, in your experience, in your  
5 treatment of people, it's also -- you can also collect  
6 information on quitting and quit attempts from people  
7 who are close to the smoker, correct?

8 A. Well, that's one way. It's not the only way.

9 Q. No. And, in fact, as you were asked about  
10 the last time you were here, the DSM manual describes

11 that as one of the --  
12 A. DSM-IV.  
13 Q. DSM-IV. It's just one of the ways that's  
14 appropriate to get information about quit attempts?  
15 A. That's correct.  
16 Q. And are you aware that there is information  
17 available in this case from people close to Mrs. Della  
18 Vecchia, including her husband, Ralph Della Vecchia?  
19 A. That there is information?  
20 Q. About her quit attempts, available from  
21 people close to her, that has been given under oath in  
22 this case? Are you aware that that exists?  
23 A. No, I'm not.  
24 Q. And that wasn't provided to you either?  
25 A. No.

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1 Q. And so when you gave your --  
2 A. But I -- but I do know from the second  
3 deposition, when Mr. Reilly queries her about the fact  
4 that she said it was a joke, she -- she reacts very  
5 vehemently that it was no joke, that was a figure of  
6 speech. She says, "And I tried very hard."  
7 Q. And when you gave your opinion, you weren't  
8 aware of the sworn testimony of Ralph Della Vecchia to  
9 the effect that he was asked, under oath --

10 MR. ROSENBLATT: Objection, Your Honor. This  
11 is not proper at this point.

12 THE COURT: I'll sustain the objection.

13 MR. ROSENBLATT: He testified before the  
14 jury.

15 THE COURT: I think I'll sustain that  
16 objection.

17 BY MR. SMITH:

18 Q. So when you gave your opinion about  
19 Mrs. Della Vecchia here today, you weren't aware that  
20 her husband had been asked under oath:

21 "Question: What did she say? How did she  
22 respond to your" -- Ralph, her husband's -- "request  
23 that she quit smoking?"

24 And he answered: "I'll try."

25 That's what she said when he asked her.

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1 "Question: Did she ever try?  
2 "Answer: I don't think so."  
3 You weren't aware of that?  
4 A. No, but I am aware of the fact that she did  
5 try patches and other things, and rather  
6 characteristically worked around that to continue  
7 smoking, as most addicted smokers do.

8 Q. And I'm going to get to the patches, I  
9 promise you, but let me just finish this piece, and  
10 we'll go right there.

11 And you also weren't aware that Ralph Della  
12 Vecchia was asked under oath: "When did your wife  
13 first attempt to quit smoking?"

14 "Answer: When she got -- when she had the  
15 lung cancer.

16 "Question: She made no other attempts to  
17 quit smoking prior to that time?"

18                   "Answer: Not that I remember."  
19                   You're unaware of that testimony?  
20           A. That's correct.  
21           Q. And you were also unaware that Mr. Della  
22           Vecchia was asked and testified under oath, question:  
23           "So you don't believe that she tried to stop smoking  
24           until she was diagnosed with lung cancer?"  
25           And his answer was: "Yeah, I'd have to say  
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1           that, yes."  
2           You were also unaware of that?  
3           A. That's correct.  
4           Q. Now, let's talk about the patch. She didn't  
5           try the patch until after she was diagnosed with lung  
6           cancer, correct?  
7           A. That's correct.  
8           Q. And she didn't use it as directed, correct?  
9           A. That's correct.  
10          Q. Doctor, would you agree with me that, first  
11          of all, some people who smoke are not addicted, some  
12          people?  
13          A. Not regular smokers. Most regular smokers  
14          become addicted.  
15          Q. Would you agree with me that there's a  
16          significant amount of variation among addicted smokers,  
17          as to the degree of their addiction?  
18          A. Oh, yes.  
19          Q. Some people are not strongly addicted, and  
20          it's easier for them to quit than others, correct?  
21          A. That's correct.  
22          Q. And the only way anybody will ever know the  
23          strength of someone's addiction is for them to make  
24          true, strong, dedicated efforts to quit, correct?  
25          A. What was the question?  
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1           Q. The only way that you ever know the strength  
2           of someone's addiction to cigarettes is for them to  
3           make a dedicated effort to quit, right?  
4           A. Well, a dedicated effort to quit, you know,  
5           is subject to various definitions. One has to usually  
6           accept the smoker's statement that they want to quit.  
7           Q. You'd disagree with my statement, then?  
8           A. Well, I would qualify it, that there is no  
9           one judgment about what a dedicated commitment is.  
10          Q. And I agree --  
11          A. That's a very qualitative term.  
12          Q. And I know it is, and it's my inability to  
13          describe it any better. I don't want to argue with you  
14          on that. I agree.  
15          But the way you know if someone is addicted  
16          strongly or not is through looking at their efforts to  
17          quit?  
18          A. You're describing what I call context, and I  
19          competitively combat the context, and that's one of the  
20          points. There are no thresholds on this. It's the  
21          context in which a person develops the smoking habit  
22          and addiction.  
23          MR. SMITH: Doctor, I've got a long outline  
24          here, but you've been here two days, and I'm going to

25 quit. Thank you very much.

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1 THE WITNESS: Thank you.

2 THE COURT: Redirect?

3 MR. ROSENBLATT: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. ROSENBLATT:

6 Q. So when counsel asked you, Dr. Richmond,  
7 referring to Mrs. Della Vecchia's first deposition --  
8 and of course you're aware of the fact that both of  
9 Mrs. Della Vecchia's depositions that were taken in  
10 this case, one on video and one not on video, were  
11 taken after her brain surgery?

12 A. That's correct.

13 Q. Subsequent to her brain surgery, correct?

14 A. That's correct.

15 Q. Okay. Now, counsel asked you about a  
16 statement made in the first deposition somehow that  
17 some of her quitting attempts were a joke in the sense  
18 that she could never go beyond 24 hours, but in the  
19 second deposition, when the tobacco company lawyer  
20 confronted her with that statement, Mrs. Della Vecchia,  
21 you said, became angry?

22 A. Very angry, yes.

23 Q. And she described --

24 A. She said, "It's no joke." And she said,  
25 "It's a figure of speech that I used in the prior

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1 deposition."

2 Q. You're asked -- you were asked a lot of  
3 questions about, you know, family members -- family  
4 members quitting. Mrs. Della Vecchia has a 29-year-old  
5 daughter who today is a --

6 MR. SMITH: Your Honor --

7 Q. -- is a heavy smoker.

8 MR. SMITH: I object, Your Honor, and I'd  
9 like to be heard.

10 THE COURT: Let's talk about it.

11 MR. ROSENBLATT: He --

12 THE COURT: I don't know where you're going  
13 with the question. Let's find out.

14 BY MR. ROSENBLATT:

15 Q. You were asked some questions about Mr. Della  
16 Vecchia having quit smoking in connection with his  
17 diagnosis of heart problems, correct?

18 A. That's correct.

19 Q. All right.

20 MR. SMITH: Your Honor, I didn't ask any of  
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1 that.

2 THE COURT: I'm sorry, sir.

3 MR. SMITH: I didn't ask a question like  
4 that. I object.

5 THE COURT: Heart problem.

6 MR. SMITH: Never said it.

7 THE COURT: I don't recall that.

8 MR. ROSENBLATT: Okay.

9 BY MR. ROSENBLATT:

10 Q. Now, Dr. Richmond, you just said, and I put  
11 quotes around it, toward the end of the cross  
12 examination, you made the statement: "Most regular  
13 smokers become addicted."

14 A. Correct.

15 Q. And that's your belief based on your 60 years  
16 as a medical doctor?

17 A. That's correct.

18 Q. And everything you've done in your career?

19 A. That's correct.

20 Q. Now, some of these addicted, regular smokers,  
21 for whatever reason, have the power to quit what's  
22 known as cold turkey; is that correct?

23 A. That's correct.

24 Q. And is that in any way contradictory to the  
25 fact that they were addicted, even though they were

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1 able to quit cold turkey?

2 A. No, it's not.

3 Q. Okay. Is it fair to say that there are some  
4 addicted smokers who can quit relatively easily, and  
5 there are some addicted smokers who can never quit?

6 A. Well, "never" is a strong word. I always  
7 believe in hope, and ultimately --

8 Q. Let me change it to say there are some  
9 addicted smokers who just have incredible difficulty  
10 quitting?

11 A. That's correct.

12 Q. Now, Dr. Richmond, in terms of Mrs. Della  
13 Vecchia's commitment to quitting smoking, this was a  
14 religious lady, who had a very close relationship with  
15 her church and her pastor, and I want you to assume  
16 that she asked her pastor to pray with her and for  
17 her --

18 MR. SMITH: Your Honor, I object to this as  
19 improper redirect. It's a hypothetical.

20 MR. ROSENBLATT: Quitting.

21 MR. SMITH: It's a hypothetical.

22 THE COURT: Gentlemen, please. Don't start.

23 Let's come talk about it.

15 BY MR. ROSENBLATT:

16 Q. Dr. Richmond, were you aware, from anything  
17 you've read in the record or the video deposition of  
18 Mrs. Della Vecchia, that she had asked her pastor to  
19 pray with her and for her that she should be able to  
20 quit smoking?

21 A. I recall seeing something about her asking  
22 God's help. I don't recall her mentioning her pastor  
23 specifically.

24 Q. Okay. Let me ask you, if that is part of the  
25 equation, that she did, in fact, ask the pastor of her

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1 church to pray with her and for her that she should be  
2 able to quit smoking, what, if anything, does that tell  
3 you about her commitment to really want to quit  
4 smoking?

5 A. Deep desire.

6 Q. You were asked certain questions on direct

7 examination on the subject of addiction. You were  
8 given some information. You were given some statements  
9 that Mr. Della Vecchia said. You were given some  
10 statements that Mrs. Della Vecchia said in her  
11 deposition, which was taken a few weeks before her  
12 video deposition.

13 Any of the information that you've been given  
14 on cross examination, does any of that in any way  
15 change the opinions that you have expressed to this  
16 jury concerning your opinion based upon reasonable  
17 medical probability that Mrs. Della Vecchia was  
18 addicted to cigarettes?

19 A. No, it does not.

20 Q. Let me ask you some questions about the two  
21 articles that you were shown.

22 Is it fair to say that Dr. Auerbach is  
23 remembered for his work and research leading him and  
24 others to the conclusion that cigarette smoking causes  
25 lung cancer; that that was the basic thrust of where

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1 his fame comes from?

2 A. Yes. He was one of the pioneers in  
3 demonstrating that, both clinically as well as in  
4 animal experimentation. Parenthetically, I can't help  
5 add that he was much reviled by representatives of the  
6 industry at that time for not having done adequate  
7 studies.

8 Q. He was criticized by the industry for not  
9 having done adequate studies which lead him to the  
10 conclusion that cigarette smoking causes --

11 A. Causes.

12 Q. -- lung cancer and a whole host of other  
13 diseases?

14 A. Yes, yes, even though he had done the basic  
15 studies making that relationship, in both man and  
16 animals.

17 Q. Now, approximately when did Dr. Auerbach  
18 reach that basic conclusion?

19 MR. SMITH: Your Honor, this is Phase I.

20 MR. ROSENBLATT: No, this is --

21 THE COURT: I think he's leading up to  
22 something at this point, but I don't want to go too  
23 deep into it.

24 MR. ROSENBLATT: I won't go too deeply,  
25 Judge. I won't, Judge.

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1 A. My recollection, and I'm doing this from  
2 memory, is that it was in the '60s and early '70s that  
3 he was doing his major studies. Might have started as  
4 early as the '50s.

5 Q. And are you aware that during this Phase I  
6 trial, the tobacco companies took the position that --

7 MR. SMITH: Objection.

8 Q. -- that Auerbach was wrong?

9 MR. SMITH: Objection, Judge.

10 Q. And that --

11 A. I said they reviled him.

12 MR. SMITH: Wait.

13 THE COURT: Just a minute. Just a minute.

14 Now we're getting into another area.  
15 MR. ROSENBLATT: I didn't bring up Auerbach,  
16 Judge; they did.  
17 THE COURT: I'm not so sure.  
18 MR. ROSENBLATT: It wasn't me.  
19 MR. SMITH: Your Honor, could we go --  
20 THE COURT: I'd really like not to get into  
21 this area at this time. I think it's basically closing  
22 argument.  
23 MR. ROSENBLATT: Okay. All right, Your  
24 Honor.  
25 BY MR. ROSENBLATT:

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1 Q. Now, the first article that you were asked  
2 about, Scar Cancer of the Lung, Oscar Auerbach MD, now,  
3 the other author is Lawrence Garfinkel, MA, so  
4 Garfinkel was not a medical doctor?

5 A. No. He was an epidemiologist who worked for  
6 the American Cancer Society.

7 Q. Okay.

8 A. I think for his entire career.

9 Q. Okay. Can you see that okay, what I've got  
10 underlined?

11 "72 percent of the scar cancers were  
12 adenocarcinomas, and 18 percent were of squamous cell  
13 type."

14 And they're talking there about the so-called  
15 scar cancer of the lung, correct?

16 A. That's correct.

17 Q. Okay. Now, you remember then this discussion  
18 page, and it goes to the next page, referring to  
19 Friedrich and Rossle, and the authors of this article,  
20 referring to those two, Friedrich and Rossle, say --  
21 both of these men believed -- both of these men  
22 believed that it was most likely that the majority of  
23 the lung scars were of tuberculosis origin, although in  
24 some cases it was not possible to determine the cause  
25 of the scar.

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1 Did you notice anywhere in this article by  
2 Dr. Auerbach and his co-authors, anywhere in this  
3 article where Auerbach ever says that the scar causes  
4 the cancer?

5 A. Well, from what I've been able to read, no,  
6 it does not say that.

7 Q. And then on the same page, Dr. Richmond, what  
8 I've got underlined: "More than three-quarters of the  
9 scar cancers were found in the upper lobes of the  
10 lungs."

11 Of course, Angie Della Vecchia's lung cancer  
12 was in her lower lobe; is that correct?

13 A. That's correct.

14 Q. Now, I want to go to that second article that  
15 counsel asked you about --

16 MR. SMITH: Mr. Rosenblatt, can I get my copy  
17 of that article?

18 THE COURT: Sure. Go ahead.

19 MR. ROSENBLATT: Sure.

20 MR. SMITH: Thank you.

21 BY MR. ROSENBLATT:

22 Q. The authors of this article are Lee, Guerra  
23 and Cagir.

24 Now, in the introduction, they give the  
25 definition of what they say is a lung scar carcinoma:

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1 "Is a carcinoma that is peripherally located, of  
2 nonbronchial origin, occurring in the subpleural scars  
3 with the puckering of the overlying pleura."

4 Does this article, in any way, at any time  
5 say that the scar -- you were asked a lot of questions  
6 about the controversy: Does the scar come first or  
7 does the cancer come first? But what I'm asking you is  
8 whether in either of these articles any of the authors  
9 say that the scar -- regardless of which came first --  
10 does the scar cause the cancer? Do any of these  
11 authors take that position?

12 A. No.

13 MR. SMITH: Your Honor --

14 A. No, they do not.

15 MR. SMITH: -- I'd like to be heard on  
16 sidebar on this issue.

17 THE COURT: I don't know why.

18 MR. SMITH: All right. Never mind.

19 BY MR. ROSENBLATT:

20 Q. Now, on the very last page of this same  
21 article by these three authors, I want to ask you, what  
22 does this mean, Dr. Richmond: "We also believe that  
23 some scar tissue is a desmoplastic host response to  
24 tumor formation"?

25 MR. SMITH: Can you read the rest of the

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1 sentence?

2 MR. ROSENBLATT: The rest of the sentence is  
3 there.

4 MR. SMITH: Can we read the rest of the  
5 sentence?

6 THE COURT: Overruled. He asked him  
7 specifically what that phrase means.

8 BY MR. ROSENBLATT:

9 Q. And you can feel free, Dr. Richmond, to read  
10 the rest of the paragraph to yourself.

11 My focus is: "We also believe that some scar  
12 tissue is a desmoplastic host response to tumor  
13 formation."

14 Does that mean that the scar is a response to  
15 the cancer?

16 A. That's correct. That's what they are saying.

17 MR. ROSENBLATT: Thank you, Doctor. No  
18 further questions.

19 THE COURT: All right. You may step down,  
20 Doctor. Thank you.

21 All right. Let's take a short recess.